**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.2639 of 1990
Date of decision: 03.05.2011**

Sansar Pal

…..Petitioner

versus

State of Haryana and another

……Respondents

**CORAM: Hon'ble Mr.Justice Jasbir Singh
Hon'ble Mr.Justice Rakesh Kumar Garg**

Present: Mr.A.P.Bhandari, Advocate for the petitioner
Mr.Sandeep Chhabra, Advocate for the petitioner
Mr.Kamal Sehgal, Addl.A.G. Haryana

Jasbir Singh, J.

This order will dispose of four writ petitions bearing Nos.2639, 3015, 11072 and 12446 all of 1990, involving similar question of law and facts. For facility of reference, facts are being mentioned from CWP No.2639 of 1990.

By filing this writ petition, the petitioner has laid challenge to a notification, issued under Section 4 of the Land Acquisition Act, 1894 (in short, the Act) on 18.8.1987, proposing to acquire besides other, the land measuring 2.40 acres in village Daulta Bad, district Faridabad, for a public purpose, namely, to develop and utilize the land for residential area Sector 16-A, Faridabad Ballabgarh controlled area. Declaration issued under Section 6 on 16.8.1988 is also under challenge. An award was passed on 13.8.1990.

It is necessary to note here that CWP No.12446 of 1990 was filed after passing of an award, as stated above, as such, in view of ratio of judgment of the Hon'ble Supreme Court in *Swaran Lata etc. v. State of Haryana and others AIR 2010 Supreme Court 1664,* it cannot be entertained. Be that as it may, in this writ petition, it is case of the petitioners that they are owners of land falling in khasra No.4/20/2 measuring 6 kanal 7 marla and they had constructed more than 20 shops in the said piece of land. It is further contended that despite objections filed under Section 5-A of the Act, their land was not released from acquisition, whereas the adjoining piece of land, owned by M/s J.D.Wood was exempted from acquisition in a very arbitrary manner. It is also a case of the petitioners that thrice earlier, notifications were issued to acquire their land, however, taking note of the construction raised by the petitioners, their land was not included in those notifications.

At the time of arguments, it was stated that land was acquired for residential purpose, however, now, as per stand taken by the respondents, the same is going to be used for construction of a service road and the mandatory green belt, as the public purpose has been changed, the acquisition cannot be sustained.

This matter came up for hearing before this Court on 30.3.2011, when the following order was passed:-

> *"At the time of arguments, it was brought to our notice that a wood factory falling in khasra No.5/1, situated next to the land of the petitioner, was released from acquisition on a ground that 'change of land use certificate' was granted to the owner of that land. It is case of the petitioner that the land falling in khasra No.5/1 is also situated on the highway and*

relief has been declined to the petitioner on a ground that construction will hinder traffic on the road.

Under the circumstances, we direct Mr.Sehgal to file an affidavit stating as to whether as on today, any portion of the land of the petitioner falls in the road alignment and if not, then why it cannot be adjusted like the land falling in khasra No.5/1.

On request, adjourned to 18.4.2011.

The position be explained regarding other cases also connected with this writ petition."

In response to that order, an affidavit of Mr.Vivek Atray, Additional Director, Urban Estates Department, Haryana has been put on record. Paragraph nos.3 and 4 of that affidavit read as under:-

"3. That as per report received from District Town Planner, Faridabad and Land Acquisition Officer, Faridabad, the case wise status of land of the petitioners are as under:-

i) CWP No.2639 of 1990-Sansar Pal vs. State of Haryana-

As per the approved demarcation plan of Sector 16-A, Faridabad bearing drawing no.DTP(F) 1741/95 dated 30.6.1995, the land involved in this CWP affects the service road, 100 feet wide green belt along NH-2, 6 no.plots of 1 khasra category and 24 feet wide road. It is also intimated that the above service road has been constructed at side between NH-2 and land in dispute.

ii) CWP No.3015 of 1990 M/s Capital Bus Service vs. State of Haryana-

As per approved demarcation plan of Sector 16A, Faridabad bearing drawing no.DTP(F) 1741/95 dated 30.6.1995, the land involved in this CWP affects the service road, 100 feet wide green belt along NH-2, 4 no. plots of 1 kanal category and 24 feet wide road. It is also intimated that the above service road has been constructed at site between NH-2 and land in dispute.

iii) CWP No.12446 of 1990 Onkar Trade Parcel Carrier vs. State of Haryana-

As per approved demarcation plan of Sector 16A, Faridabad bearing drawing no.DTP(F) 1741/95 dated 30.6.1995, the land involved in this CWP affects the100 feet wide green belt along NH-2 and 45 feet wide road. It is also intimated that the above service road has been constructed at site between NH-2 and land in dispute.

iv) CWP No.11072 of 1990 Deepak Sachdeva vs. State of Haryana

As per approved demarcation plan of Sector 16A, Faridabad bearing drawing no.DTP(F) 1741/95 dated 30.6.1995, the land involved in this CWP affects the site of water works.

4. That the land of J.D.Wood falling in khasra No.5/1 was released under section 5A objections filed by the landowner. The land of J.D.Wood was released as their's was a running factory. However, the land of the petitioner cannot be released as it affects roads/ other services as mentioned above. The land of J.D. Wood was released in year 1988, whereas as per the layout plan, the land is now required for the aforesaid purpose. Further most of the land of the petitioner was vacant at the time of section-4 notification. The released land owned

by M/s J.D. Wood Products in Khasra No.5//1 of village Daultabad has been marked in green colour on the plan at Annexure R-1."

A copy of the site plan is also annexed with the affidavit, perusal of which clearly indicates that if land of the petitioners is kept out of acquisition, it will disturb the over-all lay out planning proposed in the acquired land. In the affidavit, it is clearly stated that land under acquisition is needed to provide service road, 100 feet wide green belt along with NH-2 and also for plots which have been carved out in the proposed lay out plan.

At the time of arguments, it also transpired that the petitioner in CWP No.3015 of 1990 is a *gair marusi tenant* in the land under acquisition. Owner of the land has not preferred any writ petition to impugne the land acquisition proceedings. If that is so, possibly tenant's petition cannot be entertained.

It is not in dispute that as per provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 (in short, 1963 Act), the area was declared as a controlled area in the year 1964. It is stated in the affidavit of Mr.Vivek Atrary dated 3.5.2011 that so far as release of land in favour of J.D.Wood is concerned, the same was granted after taking note of the objections filed under Section 5-A of the Act. The above said concern, after getting change of land use certificate and on payment of requisite charges, has constructed a factory, which was in running condition when notification under Section 4 of the Act was issued. It is further stated that most of the land of the petitioner was lying vacant at the time of issuance of that notification. It is stated that the construction was raised by the petitioner before the year 1960, however, at the time of arguments, nothing was shown to us to

substantiate the above said argument. From perusal of the documents on record, it is evident that the construction appears to have been raised after the land in dispute was declared as controlled area under the provisions of 1963 Act. If that is so, no relief can be granted to the petitioners, being violative of law.

No case of discrimination has been made out by the petitioner the contention raised is rejected.

Further argument of the petitioners that on account of change of public purpose, the acquisition is liable to be quashed, has no legs to stand. It is true, that the land was acquired to develop it for residential purpose and now as per the development plan, it is going to be utilized for carving out of a service road and also to use it for mandatory green belt to be left next to the national highway No.2. Such a change is permissible, as per the ratio of a judgment of the Hon'ble Supreme Court in the case of *Union of India v. Jaswant Rai Kochar (1996) 3 SCC 491*. In that case, land was acquired for a Housing Scheme, however, the same was used for a commercial purpose. On account of that, it was prayed that the acquisition be quashed. That argument was rejected by the Hon'ble Supreme Court by observing as under:-

> *"..... it is a well-settled law that land sought to be acquired for public purpose may be used for another public purpose. Therefore, when the notification has mentioned that the land is sought to acquired for housing scheme but it is sought to be used for District Centre, the public purpose does not cease to be public purpose and the nomenclature mentioned in the notification under section 4(1) as housing scheme cannot be construed to be a colourable one. The*

notification under section 4(1) could not have been quashed on the ground that the land is sought to be used for district Centre, namely, for commercial purpose.....”

To the same effect is the ratio of the judgment of the Hon’ble Supreme Court in *P.Narayanappa v. State of Karnataka (2006) 7 SCC 578 and Ravi Khullar v. Union of India (2007) 5 SCC 231*.

It has been so held by a Division Bench of this Court in the case of *Sureshwati @ Suresh Kumari v. State of Haryana and others, (CWP No.4066 of 2010),* decided on 18.1.2011.

In view of facts mentioned above, no case is made out for interference.

Dismissed.

(Jasbir Singh)
Judge

03.05.2011 **(Rakesh Kumar Garg)**
gk **Judge**